undertaking to sing is an affirmative agreement which in the ordinary way the court will not compel him to perform, the undertaking being dependent on his personal qualification and volition; but side by side with this affirmative undertaking the defendant has also given a negative undertaking not to sing anywhere else in Kuala Lumpur for a certain period: and under section 55 illustration (c) of the Specific Relief Act, Act 137, the circumstance that the court is unable to compel specific performance of the affirmative agreement does not preclude the court from granting an injunction to compel performance of the negative undertaking, if the plaintiff has not failed to perform the contract so far as it is binding on him. In our view this case falls squarely within this section and within the cases of *Lumley* v. *Wagner*[2] and *The Broome (Selangor) Rubber Plantations* v. *R.H. Whitley*,[3] cited to us.

To remove any doubt, we state that should this matter come up again before the learned judge on application by the defendant, the learned judge will be free to set aside the interim injunction which we ordered be issued, and he will no doubt be advised by counsel as to the principles which he should observe in exercise of his discretion.

Appeal allowed.

Solicitors: *Chew & Co.*

EAST UNION (MALAYA) SDN. BHD. v. GOVERNMENT OF THE STATE OF JOHORE & GOVERNMENT OF MALAYSIA

[F.C. (Suffian L.P., Wan Suleiman F.J., Syed Othman F.J., Abdul Hamid F.J. & Hashim Yeop A. Sani J.) October 23, 24 & December 12, 1980]

[Kuala Lumpur — Federal Court Suit No. 1 of 1980]

Constitutional Law — Legislation enacted by Federal Parliament on land — Whether ultra vires the Federal Constitution — Whether legislation ensures uniformity of law and policy — Collection of revenue — Pith and substance — Land tenure — Validity of law — Exclusive jurisdiction of Federal Court — National Land Code, ss. 97, 99 & 100 — Federal Constitution, arts. 76(4) & 128(1)(a).

Land Law — Collection of revenue — Forfeiture of land — Whether federal legislation valid — Whether ultra vires Federal Constitution — Federal Constitution, art. 76(4) — National Land Code, ss. 97, 99 & 100.

In this case the applicant applied by motion for a declaration that section 100 of the National Land Code enacted by the Federal Parliament is void on the ground that it is *ultra vires* Article 76(4) of the Federal Constitution. Leave was granted to bring the motion and the matter came before the Federal Court. It was argued (a) that as "land revenue" and its collection are not enumerated in clause (4) of Article 76, Parliament does not have power to enact section 100 which deals with the collection of revenue; (b) that even before the National Land Code there were already uniform laws dealing with the collection of land revenue in arrears and that what was effected by sections 97 and 100 was a fundamental change in the law.

Held: (1) clause (4) of Article 76 refers to "land tenure" as a matter with respect to which Parliament may legislate and this is wide enough to cover collection of land revenue;

(2) the impugned provision ensured uniformity of law and practice and therefore is constitutional, regardless of the position previously.

The following authorities were cited in argument:-

(1) *Attorney-General for Ontario* v. *Reciprocal Insurers* [1924] A.C. 328, 337-8.

(2) *South Australia* v. *The Commonwealth* 65 C.L.R. 373, 424, 442.

(3) *Attorney-General for Canada* v. *Attorney-General for Quebec* [1947] A.C. 33, 43.

(4) *Attorney-General, British Columbia* v. *Attorney-General, Canada* [1937] A.C. 368, 376.

(5) *Assam Railways and Trading Co.* v. *Commissioner of Inland Revenue* [1935] A.C. 445, H.L.

(6) *Eastman Photographic Materials Company* v. *Comptroller-General of Patents, Designs and Trade Marks* [1898] A.C. 571, 575.

(7) *River Wear Commissioners* v. *Adamson* (1877) 2 App. Cas. 743, 763.

(8) *Prenn* v. *Simmonds* [1971] 1 W.L.R. 1381.

(9) *Katikiro of Buganda* v. *Attorney-General* [1961] 1 W.L.R. 119.

(10) *Harakchand & Ors.* v. *Union of India & Ors.* A.I.R. 1970 S.C. 1453, 1458, 2nd col., para. 6.

(11) *Great West Saddlery Co. Ltd.* v. *The King*, [1921] 2 A.C. 91, 116, P.C.

(12) *Citizens Insurance Co. of Canada* v. *Parsons* (1881) 7 App. Cas. 96, 103, 105, 106, 107, 108, 110, 113.

(13) *Great Western Saddlery Co. Ltd.* v. *King* [1921] 2 A.C. 91, 100.

(14) *Attorney-General Ontario* v. *Mercer* 8 App. Cas. 767, 772.

(15) *Atma Ram* v. *State of Punjab* A.I.R. 1959 S.C. 519, 524.

(16) *D.N. Banerji* v. *P.R. Mukherjee* A.I.R. 1953 S.C. 58.

(17) *Russell* v. *The Queen* 7 App. Cas. 829.

(18) *O.N. Mohindroo* v. *Bar Council* A.I.R. 1968 S.C. 888.

FEDERAL COURT.

James J. Puthucheary (*Masacorale Upali* and *Lloyd Fernando* with him) for the applicants.

Datuk Haji Abu Mansor bin Ali (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): This is a motion by the applicant company for a declaration that section 100 of the National Land Code ("the Code") enacted by the Federal Parliament is void on the ground that it is *ultra vires* Article 76(4) of the Federal Constitution in that the section deals with a subject with respect to which it has no power to legislate.

This motion comes in the first instance before us rather than the High Court, because when the validity of a law is challenged on the above ground, under Article 128(1)(a) the Federal Court has exclusive original jurisdiction which we can exercise after leave has been granted. Leave was granted on April 28 this year, see [1980] 2 M.L.J. 143.

In the company's petition they pray for two other things as follows:

"(2) in the alternative, for a declaration that section 100 of the Code is void on the ground that it is inconsistent with Article 13; and

(3) for an order that the memorial entered on the Certificate of Grant pursuant to an order made under section 100 be expunged."

Datuk Mansor, counsel for the respondent Johore State Government and the Federal Government ("Go-

vernment"), objected to this court considering these additional prayers, on the ground that we have no jurisdiction to do so and that we can consider and determine them only on appeal. Mr. Puthucheary after a brief debate conceded — in our view rightly — that these two prayers should be sought in the first instance not from us but from the High Court in whose original jurisdiction they lie.

Thus the only issue for our determination is whether or not Parliament has exceeded its power when enacting section 100 of the Code. The company argues that Parliament has done so, while both Governments contend otherwise.

The facts that give rise to those proceedings are undisputed. The applicant company owned a large rubber estate known as the Sungai Papan Estate in Johore totalling 7,470 acres. It failed to pay quit rent to the Johore State Government within time.

The Collector of Land Revenue in Kota Tinggi ("the Collector") in whose jurisdiction the estate lies issued five Form 6A notices as required by section 97 of the Code demanding payment of quit rent due which was in arrears from the company. On November 19, 1974, the manager of the Estate received a letter from the Collector informing him that the time limit in the notices had expired and that he was taking steps to forfeit the estate to the State Government. On December 3, 1974, the company's representative went to the Collector to pay their arrears ($115,625.60), but the Collector refused to accept payment. On December 15, an attempt was made to pay through the post, but again the Collector refused to accept payment. On March 13, 1975, a notice of forfeiture of the estate was published in the Johore Government Gazette, and on June 1, 1975, a memorial thereof was registered on the register documents of title under section 100 of the Code.

Here it is convenient to reproduce section 100 and other related sections:

"97. (1) Where any rent payable in respect of any alienated land is in arrear, the Collector may cause to be served on the proprietor thereof a notice of demand in Form 6A.

(2) A note of the service of any such notice shall be endorsed, by or at the instance of the Collector, on the register document of title to the land to which the notice relates.

99. If the whole of the sum demanded by any notice under section 97 is tendered to the Collector within the time specified therein, the notice shall thereupon cease to have effect, and the Collector shall cancel, or cause to be cancelled, the note endorsed pursuant to subsection (2) of that section on the register document of title to the land to which the notice related.

100. The Collector shall not during the period specified in any notice under section 97 accept the tender by or on behalf of any person or body of a lesser amount than the sum thereby demanded; and if by the end of that period the whole of that sum has not been tendered to him, he shall thereupon by order declare the land forfeit to the State Authority, and the provision of Part Eight shall have effect with respect thereto accordingly."

The Code enacted by the Federal Parliament after Merdeka came into force on January 1, 1966, and is expressed to have effect in all States on the Peninsula including Malacca and Penang.

As Mr. Puthucheary on behalf of the applicant company based his contention that section 100 is unconstitutional, on the division of legislative power between the Federation and States, he found it necessary to take us through the Federation of Malaya Agreement, 1948 (the constitution which applied from 1948 until Merdeka), the Reid Report and draft, the Government's White Paper on the Report, and finally to Article 76 as enacted for Merdeka on August 31, 1957. Accordingly, we find it convenient to trace the history of the matter before dealing with Mr. Puthucheary's arguments.

Immediately prior to Merdeka, a subject could be wholly federal or wholly state or partly federal and partly state. In the case of the last, the federal legislature would have power to make law, but such law must confer executive authority on States and Settlements. In particular, under Clause 48 of the Agreement, the Federal Legislature had power to legislate with respect to, in the words of the first column of the Second Schedule thereto:

"LAND

100. Compulsory acquisition of land.

101. Land legislation to the extent of ensuring a common policy and a common system of administration, but having regard to customary tenures and usage and other necessary variations in any State or Settlement; conveyancing and law of property; registration of Titles and registration of Deeds; mortgage and charges interest restriction.

102. Malay reservations to the extent of ensuring common policy."

provided that, according to the second column, such federal laws shall (except so far as matters of policy common to two or more States or Settlements are involved) confer on States and Settlements executive authority over the matters set out in the first column.

Despite the possibility of the federal legislature making uniform land laws for the whole country, there still existed in 1956-7 separate land enactments for each Malay State and for the two Settlements.

The Royal Commission headed by Lord Reid, appointed in 1956 to draft a Constitution for independent Malaya, considered the position unsatisfactory. While recommending that land should after Merdeka remain a state subject, they commented in paragraph 84:

"The other matter on which we think it necessary to make a recommendation is the power of Parliament to legislate with regard to State subjects. We do not recommend that Parliament should be entitled to override the wishes of any State on any State subject except in particular circumstances to which we shall refer later; but ... it is desirable with regard to many State subjects that the laws in force in the various States should be as uniform as possible. We therefore recommend ... that Parliament should have power to pass an Act on any State subject but that such an Act should not come into force in any State until it has been adopted by an Enactment of the State Legislative Assembly, and that in adopting such an Act the State Legislative Assembly should be entitled to make such modifications as it deems appropriate. ... In making this recommendation we have particularly in mind legislation with regard to land and kindred subjects. ..."

Dealing specifically with land, the Commission observed that the existence of so many land enactments was far from satisfactory. They said:

"The present position with regard to land is not the same in all parts of the Federation and is not at all satisfactory. In the Settlements the law is substantially similar to the law in England. In the old Federated States the law is substantially

uniform, subject to certain specialities in Negeri Sembilan. In the old Unfederated States the law is not uniform. The Federation has the power to legislate on land matters to the extent of ensuring common policy and a common system of administration, due regard being paid to customary tenure and usage and other necessary variations in any State or Settlement. We understand that during the years 1948 to 1952 there was considerable discussion as to whether land legislation should be effected by the States and Settlements or whether, under head 101 of the Second Schedule to the Agreement, it should be by the Federal Legislative Council; and that it was finally decided that such legislation could only be effected by the Federal Council. The Federal Land Laws (Enabling) Ordinance of 1952 authorizes the Councils of State and Settlement Councils to pass laws modifying existing [Land] Enactments or Ordinances subject to the prior approval of the High Commissioner in Council, but nothing has yet been done to achieve greater uniformity. The recommendation which we have already made with regard to the power of Parliament to pass laws on State subjects was framed with this question in mind (para. 86).

In our judgment land must remain a State subject and we so recommend... but we are convinced by many representations and by our own investigation that in many respects the present position is not satisfactory.... We have already recommended (para. 84) that the Federal Parliament should be entitled to pass Acts on State subjects, but that any such Act should not come into force in any State unless it is adopted by the State, and that a State may adopt such an Act in whole or in part or by stages and subject to such modifications as the State legislature may determine. In making this recommendation we had primarily in mind a new National Land Code which we hope will be drafted and enacted without undue delay but after due consultation with the States. We would expect that the Code could then be adopted by each of the States with perhaps a few amendments and that it could be considered in the Settlements how far and how soon it would be appropriate to adopt its various provisions" (para. 88).

The Commission then drew attention to the view of one of their members Sir William McKell, then retired Governor-General of Australia. They said in the same paragraph 88:

"Sir William McKell considers that the National Land Code, making provision for uniform land law, is of such importance to the future of Malaya that the Federal Parliament should, after consultation between the Federal and State Governments, have power to apply the Code in any State or States that fail to adopt it."

As is well known, the Reid Report and Draft Constitution were published for public information and discussion, and eventually the Government published a White Paper setting out their views and decisions. With regard to federal power to legislate on land, the White Paper says the intention was that Parliament should have power to make laws with respect to land only for the purpose of ensuring uniformity of law and policy. It said:

"25. A number of drafting amendments have been made to the recommendations of the Commission with regard to the division of legislative and executive powers between the Federation and the States. In general, however, it is proposed to accept the recommendations of the Commission as set out in the Sixth Schedule to their draft Constitution for the Federation.

26. The Commission paid particular attention to the power of Parliament to legislate with regard to State subjects for purposes of uniformity. Their recommendation was that Parliament should have power to pass an Act on any State subject but that such Act should not come into force in any State until it has been adopted by an Enactment of the State Legislative Assembly, and that in adopting such an Act the State Legislative Assembly should be entitled to make such modifications as it deemed appropriate. The Commission also recommended that legislative and executive responsibility should always go together. These proposals have been accepted in general. But in the case of certain [State] subjects, it has been agreed that uniformity in legislation and policy is essential both in the interests of the States themselves and for the good of the country as a whole. These subjects are land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases other than mining leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisitions, rating and valuation of land.... Under the present Federation Agreement, the Federal Legislature has wide powers to make laws on these subjects; in respect of some the power is unrestricted, and in respect of others it is limited to ensuring uniformity of legislation or ensuring common policy and a common system of administration. The extent to which such laws should confer executive authority on the States and Settlements is set out in the Agreement. It is proposed to adopt a modified form of these arrangements. The intention is that Parliament should have power to make laws with respect to subjects referred to above only for the purpose of ensuring uniformity of law and policy, and if any such law makes provision for conferring executive authority on the Federation it shall not operate in any State unless approved by resolution of the Legislative Assembly of that State."

The above extracts bring out clearly the thinking behind the provisions of the Merdeka Constitution relating to the distribution of power between the Federation and States, especially with regard to land.

Article 76 itself reads as follows:

"76. (1) Parliament may make laws with respect to any matter enumerated in the State List, but only as follows, that is to say:

(a) for the purpose of implementing any treaty, agreement or convention between the Federation and any other country, or any decision of an international organisation of which the Federation is a member; or

(b) for the purpose of promoting uniformity of the laws of two or more States; or

(c) if so requested by the Legislative Assembly of any State.

(2) No law shall be made in pursuance of paragraph (a) of Clause (1) with respect to any matters of Muslim law or the custom of the Malays or to any matters of native law or custom in the Borneo States and no Bill for a law under that paragraph shall be introduced into either House of Parliament until the Government of any State concerned has been consulted.

(3) Subject to Clause (4), a law made in pursuance of paragraph (b) or paragraph (c) of Clause (1) shall not come into operation in any State until it has been adopted by a law made by the Legislature of that State, and shall then be deemed to be a State law and not a federal law, and may accordingly be amended or repealed by a law made by that Legislature.

(4) Parliament may, for the purpose only of ensuring uniformity of law and policy, make laws with respect to land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land, and local government; and Clauses (1)(b) and (3) shall not apply to any law relating to any such matter."

The scheme of the constitution may be summarised as follows:

(1) Land is a State subject, item 2 of the State List in the Ninth Schedule. Revenue from land is assigned to States, item 2 Part III of the Tenth Schedule.

(2) The general rule now is that legislative and executive authorities always go together. Thus, over land, States have both legislative and executive authority. Only the State Legislative Assembly may legislate with respect to it: Parliament may not. And States also have executive authority over land. Articles 74(2) and 80(1) & (2).

(3) Notwithstanding the general rule that Parliament may not legislate with respect to State subjects, under Article 76 Parliament may exceptionally do so for the two purposes set out in paragraphs (a) and (b) of Clause (1) of that Article or if so requested by the Legislative Assesmbly of any State, subject to the restrictions in Clause (2) thereof; but any such federal law does not come into force in any State until it has been adopted by the legislature of that State which may however make such modifications as it likes or even repeal it.

(4) There is however a special provision with regard not, be it noted, to land generally, but to the following aspects of land, namely, "land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land." With regard to these matters, Clause (4) expressly provides that Parliament may make laws, for the purpose only of ensuring uniformity of law and policy; and that these laws come into force in States without the necessity of being adopted by their Legislative Assemblies and that the latter have no power to modify them.

(5) Article 80, by Clause (2), provides that with certain exceptions that are not relevant here the executive authority of the Federation does not extend to State subjects, and, by clause (3) which deals specifically with land, that so far as federal law made under Article 76(4) makes provision conferring executive authority on the Federation, it shall not operate in any State, unless approved by resolution of the Legislative Assembly of that State.

Despite the importance attached to uniform land law, the National Land Code was not to make its debut on the statute book until seven years later — the delay being due to the time, patience and diplomacy that had to be devoted by the Federal Government to get States to agree to a Code common to the whole peninsula.

When enacted, its long title says that it is:

"An Act to amend and consolidate the laws relating to land and land tenure, the registration of title to land and of dealings therewith and the collection of revenue therefrom within [the States on the peninsula], and for purposes connected therewith."

and the third paragraph of its preamble says:

"AND WHEREAS it is now expedient for the purpose only of ensuring uniformity of law and policy to make a law with respect to land tenure, registration of titles relating to land, transfer of land, leases and charges in respect of land, and easements, and other rights and interests in land."

It is to be observed that item 2 of the State List in the Ninth Schedule is headed "land" which is a State subject and thereafter it says that this item includes the various sub-items further set out therein, and that item 2 Part III of the Tenth Schedule assigns land revenue to States; from all this it is clear — and not disputed — that anything to do with land is wholly a state subject.

It is to be further observed that the expression "collection of revenue" does not appear amongst the items set out in Clause (4) of Article 76 with respect to which Parliament may, for the purpose only of ensuring uniformity of law and policy, make laws; and that it appears for the first time in the long title of the Code.

Therefore Mr. Puthucheary said that as "land revenue" and its collection are not enumerated in Clause (4) of Article 76, Parliament does not have power to enact section 100 which deals with the collection of revenue. Mr. Puthucheary cited in support several decisions on the Canadian and Australian constitutions on the "pith and substance" doctrine; which self-same decisions, Datuk Mansor argued, on the contrary support the Government's contention that the section is constitutional.

With respect there is no need for us to deal with these decisions in detail, because in our judgment the expression "land tenure", which, according to Clause (4) of Article 76, is matter with respect to which Parliament may legislate, is wide enough to cover collection of revenue. Land tenure is nowhere defined in the constitution, and so we have to give it its ordinary dictionary meaning, which is the relationship of landlord and tenant which determines the terms upon which land is occupied or owned, or the mode of holding or occupying land; and it is common practice for lord and tenant to agree on the amount of rent that is payable by the tenant, and on what is to happen should the tenant make default. We are therefore of the opinion that there is no merit in this argument of Mr. Puthucheary.

He also argued that even before the National Land Code there was already uniform law — though scattered in the various Enactments of the Malay States and in the S.S. Land Revenue Collection Ordinance Cap. 251 — dealing with collection of land revenue in arrears, and that the Explanatory Note on the bill that became the National Land Code said that sections 97 and 100 were to make a "fundamental" change, in that unlike previously when failure to pay resulted in the land being put up for sale by public auction, henceforth "Failure to pay after service of a notice of demand [will result] in the automatic forfeiture of land"; and that therefore the enactment of section 100 was not "for the purpose only of ensuring uniformity of law and policy." It was not disputed that there already existed uniformity of law and that the Code made a fundamental change in the law. But with respect, in our judgment there is no merit in this argument either. Clause (4) of Article 76 authorizes Parliament to legislate on land for the purpose only of ensuring uniformity of law and policy. This does not mean that Parliament may not do so where already there is uniformity. In our view Parliament may do so even if there was already uniformity — for instance, if Parliament wishes to replace the uniform law by another uniform law that it considers more suited to changed circumstances; or if Parliament considers it expedient simply to re-enact and consolidate the already uniform laws to be found in various State enactments, in order to secure a uniform policy and application of such law. The existence of separate State enactments which are substantially similar but with minute differences tucked away here and there,

are veritable traps to lawyers with clients in different states and to land officers subject to inter-state transfers — not to mention the Federal Court when we go on circuit.

In our judgment, the sole test is simply this: does the impugned provision enacted by Parliament ensure uniformity of law and policy? If it does, it is constitutional, regardless of the position previously. If it does not, it is unconstitutional. By this test, the impugned section is within the power of Parliament to enact.

For the above reasons we dismiss this suit with costs.

Suit dismissed.

Solicitors: *Skrine & Co.*

POW HING & ANOR. v. REGISTRAR OF TITLES, MALACCA

[F.C. (Raja Azlan Shah Ag. L.P., Abdul Hamid F.J. & Abdoolcader J.) December 18, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 230 of 1980]

Land Law — Transfer of land — Transfers submitted for registration — Instruments rejected — Purported forfeiture of land for arrears of land rent — Note of service of notice of demand of arrears not endorsed on the register document of title — No order made for forfeiture — Publication of notification in Gazette — Publication after date of presentation of instruments — Refusal to register instruments wrong — Indefeasibility of title — Validity of forfeiture — Failure to comply with provisions of the law — Mandatory provisions — Note or endorsement made ex post facto — Registrar's caveat — Government Proceedings Ordinance, 1956, s. 29 — National Land Code, 1965, ss. 93, 97, 98, 100, 130, 131, 133, 134, 320, 321, 418.

Administrative Law — Forfeiture of land — Need to comply with statutory requirements — Exercise of powers and duties — Need to comply with the law — National Land Code, 1965, ss. 97, 100 & 133.

In this case the registered proprietor of land in Malacca had executed on August 3, 1979 a memorandum of transfer in favour of the appellants in specified shares. On December 18, 1979 the memorandum of transfer and a discharge of a charge were transmitted to the respondent for registration together with the the relevant issue document of title. At that time the register disclosed that the title was clear and presentation of the instruments was entered as having been made on December 27, 1979. On January 2, 1980 the 2nd appellant executed a memorandum of transfer of his share in the land to the 1st appellant. This transfer and a charge executed on January 18, 1980 were presented for registration on January 23, 1980. On February 1, 1980 the solicitors for the appellants were informed by their agents that the two instruments had been rejected by the respondent on January 31, 1980. On February 6, 1980 the appellant's solicitors received a letter from the respondent dated January 29, 1980 rejecting the transfer and discharge presented for registration on December 27, 1979. A further search was made and this revealed an undated and unsigned note to the effect that Form 6A (a notice of demand for arrears of rent) was issued on September 18, 1978 and registered on September 25, 1978. A notification in form 8A was published in the *Gazette* on January 31, 1980. It appeared that the registered proprietor applied to the State Authority on June 26, 1979 for the annulment of the forfeiture but this was rejected on December 12, 1979. On February 9, 1980 the respondent entered a Registrar's caveat against the land. The appellants appealed to the High Court in respect of the transfer and discharge and the subsequent transfer and charge against the refusal of the respondent to register the instruments presented. They also claimed relief by way of cancellation of any endorsement on the register in respect of the purported forfeiture and restriction of transactions. The learned trial judge held that the respondent's refusal to register the instruments presented was wrong and he made declarations to that effect. However he held that the Collector had since completed the forfeiture and the land had become State land, so that the order sought by the appellants to set aside the forfeiture amounted in effect to proceedings for the recovery of land from the State Authority and this were debarred by section 29 of the Government Proceedings Ordinance. 1956. The appellants appealed.

Held: (1) the Collector of Land Revenue had failed to comply with the mandatory provisions of sections 97(2) and 100 of the National Land Code and therefore the purported forfeiture of the land was invalid and must be set aside;

(2) the learned judge was correct in holding that the respondent was wrong in law in having refused to register the instruments presented by the appellants;

(3) the Registrar's caveat entered should be expunged and the respondent be directed to register the instruments presented by the appellants;

Cases referred to:-

(1) *Frazer* v. *Walker* [1967] 1 A.C. 569, 580 & 585.
(2) *Eng Mee Yong* v. *V. Letchumanan* [1979] 2 M.L.J. 212, 214.
(3) *Howard* v. *Bodington* (1877) 2 P.D. 203, 210 and 211.
(4) *F.* v. *F.* [1971] P. 1, 11 and 12.
(5) *London & Clydeside Estates Ltd.* v. *Aberdeen District Council & Anor.* [1980] 1 W.L.R. 182, 189.
(6) *Tham Hing Kwai* v. *State of Negeri Sembilan & Ors.* [1932] M.L.J. 31, 40.
(7) *Collector of Land Revenue, Tapah* v. *Chong Loke Chong* (1923) 3 F.M.S.L.R. 60, 65.

FEDERAL COURT.

N. Ramachandran (*Joseph Chia En Tet* with him) for the appellants.

Dato Abu Mansor bin Ali (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Abdoolcader J. (delivering the judgment of the Court):

PRELIMINARY: THE FACTS AND BACKGROUND

The State Authority of Malacca within the definition of the National Land Code, 1965 has fallen victim to the bureaucratic bungling of a land office functionary, with disastrous consequences and leaving in its wake frustrated officialdom — that is the moral and indeed the net effect of the requisite orders we made on the conclusion of somewhat brief submissions by counsel on both sides in allowing this appeal from the decision of Wan Yahaya J., involving the validity of the purported forfeiture of a parcel of land in Malacca by the Collector of Land Revenue, Alor Gajah, in the exercise of his powers conferred by the relevant provisions of the National Land Code ('the Code').

The facts of the matter are clear and simple and not in dispute; what is in issue is a pure question of law. It is necessary by way of background in considering the question of law involved to briefly set out a narrative of the facts and circumstances culminating in these proceedings to appreciate and evaluate the events that have transpired, the necessity for the appellants to resort to judicial process for the determination of their rights and the judgment delivered in this regard by the learned judge. To avoid tautology, all references to statutory provisions in this judg-